LEWIS AND ROCA LLP
LAWYERS

0000008684

RECEIVED
AZ CORP COMMISSION

SEP 7 4 31 PM '99

DOCUMENT CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
CHAIRMAN

JIM IRVIN
COMMISSIONER

WILLIAM A. MUNDELL
COMMISSIONER

IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271 OF THE TELECOMMUNICATIONS ACT OF 1996.	DOCKET NO. T-00000A-97-0238 **RHYTHMS LINKS INC.'S PRELIMINARY STATEMENT OF POSITION**

RHYTHMS LINKS PRELIMINARY STATEMENT OF POSITION

Rhythms NetConnections Inc. and its subsidiary Rhythms Links (formerly ACI Corporation) (jointly "Rhythms"), in accordance with the Procedural Order issued by the Commission on July 22, 1999, submits its preliminary statement of position regarding U S West Communications, Inc.'s ("U S West's") compliance with the competitive checklist in §271 of the Telecommunications Act of 1996 ("Act").

Rhythms offers high-speed data transmission services to customers utilizing the Digital Subscriber Line ("DSL") family of services. DSL technology enables a carrier, such as Rhythms, to use existing copper phone lines to deliver innovative high-speed data services to homes and offices. Because DSL relies on existing phone lines, DSL-based services can be delivered to virtually any customer's home or business address more quickly and at less cost than other data services. Rhythms' services can be used for telecommuting, dedicated access to the Internet and access to Intranet-type networking solutions. Rhythms' provision of DSL services competes directly with U S West's DSL service, normally referred to as Megabit.

Rhythms does not, however, currently compete in the inter-LATA voice market. That is, Rhythms does not currently provide any long distance voice services, and therefore has no direct economic incentive to seek to keep U S West or any other incumbent LEC out of that marketplace. Rather, Rhythms' only interest in participating in this proceeding is to ensure that the purpose of §271 of the Telecommunications Act of 1996 — to ensure the development of competition in local services prior to allowing the incumbent LECs into the inter-LATA toll market — is fulfilled.

In order to provide its data services, Rhythms is dependent on U S West for access to three basic elements of the existing telephone network. First, Rhythms must collocate and maintain its own equipment on or near U S West's premises at a point where the loops serving Rhythms' customers terminate. Second, Rhythms must lease from U S West, "clean" copper loops. That is, DSL-capable copper loops that are unfettered by any interfering POTS-enhancing loop equipment, such as load coils or excessive bridged taps. Third, Rhythms often requires the timely provision of either unbundled dedicated transport or special access facilities from U S West where competitive transport alternatives are unavailable. As a result, Rhythms' preliminary statement of position focuses on checklist items No. 1 (interconnection), No. 2 (access to network elements), No. 4 (local loop) and No. 5 (local transport).

LEWIS AND ROCA LLP
LAWYERS

Checklist Item Nos. 1 and 2 <u>(interconnection and access to UNEs)</u>:

Rhythms shares AT&T's concerns about the unacceptable timeliness and manner in which U S West offers collocation. Collocation is a critical first step toward interconnection, and U S West's collocation delays and pricing significantly impede Rhythms' ability to enter the Arizona local services marketplace. For instance, where U S West shuts Rhythms out of a particular central office, ostensibly for space availability reasons, Rhythms is effectively barred from serving the residential and business customers served out of that central office. Moreover, because the Rhythms business plan involves telecommuting applications, Rhythms will need to collocate in numerous central offices surrounding each market area to ensure complete coverage for a client company's workforce. The inability to physically collocate in just a single central office that Rhythms has targeted can and will significantly impact Rhythms' entire deployment design. Thus, in order for effective competition to occur in local services, strict attention must be paid to U S West's collocation availability policies.

For example, where no space is "available" in a central office, U S West, throughout its region, has routinely delayed the requesting CLEC the opportunity to perform a walk through of the central office in question, until a state regulatory commission becomes involved. Also, U S West generally refuses to give a firm committed timeline for its intentions to build or remedy the lack of space within a given central office. Perhaps more importantly, U S West routinely fails to meet its committed intervals for provisioning physical caged and cageless collocation space to Rhythms, effectively impeding the ability of Rhythms to provide DSL services in a timely fashion in competition with U S West's retail DSL services. Section 7.4 of the parties' interconnection agreements in Arizona, Colorado, Minnesota, Oregon and Washington provides that U S West will provide collocation space to Rhythms within approximately 160 days of ordering. U S West has repeatedly failed to provide collocation within the 160-day interval. In fact, *U S West has yet to deliver collocation space in a single central office on time to Rhythms in Washington, Oregon or Minnesota.* U S West also projects that *all* remaining applications in Washington will be delinquent. In Colorado, the only state where Rhythms has ever received collocation delivery within the overall interval, US West has still missed the turnover dates for 86% of the central offices where Rhythms requested collocation.

The FCC has defined item No. 2 of the Section 271 checklist (access to UNEs) as "nondiscriminatory access to network elements at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory, in accordance with the terms and conditions of the interconnection agreements and the requirements of Sections 251 and 252. U S West must also provide network elements in a manner that allows the requesting carrier to combine them to provide a finished telecommunications service.". With respect to U S West's duty to provide non-discriminatory access to operation support systems ("OSS") necessary for CLECs to successfully access U S West' s unbundled network elements, U S West has yet to identify an electronic bonding interface sufficient for any DSL-based advanced services provider to build a scaleable business. Among other problems, Rhythms has been unable to get from U S West any pre-ordering information about loops, including which loops are currently available and which need special "conditioning" in order to be DSL-capable. U S West has been equally deficient in its ordering, provisioning, repair and maintenance, and billing capabilities. For more detail, please see Rhythms Statement of Position regarding OSS issues, filed with the Commission on September 3, 1999.

LEWIS AND ROCA LLP

LAWYERS

Checklist Item No. 4 (access to the local loop):

Rhythms agrees with AT&T that U S West is putting illegal restrictions on the use of unbundled elements and is double-charging CLECs for the provision of so-called "conditioned" loops. Rhythms also concurs with AT&T that U S West has improperly restricted access to loops provisioned over digital loop carrier ("DLC") technology.

Because U S West has not finished providing collocation to Rhythms in Arizona, Rhythms has not yet been able to request local loops in Arizona. However, Rhythms' experience ordering local loops from U S West in other states has been, without a question, unacceptable. In particular, Rhythms has experienced an inordinately high number of order rejections related to incorrect Connecting Facility Assignment ("CFA") information. CFA is specific location data within U S West's central office, provided to Rhythms by U S West. Note however, that each time a Rhythms order gets rejected by U S West for incorrect CFA, it is Rhythms' relationship with its customer that is impacted while the rejected order gets escalated, the problem fixed, and the order resubmitted. In general, Rhythms has encountered two scenarios related to rejections caused by lack of proper CFA. Either the CFA data is not inputted by U S West into its LFACS databases, or the CFA data is inputted incorrectly into LFACS, causing the central office connection frames to not be labeled or to be labeled incorrectly, delaying the provisioning of unbundled loops. These problems amount to a significant percentage of U S West's loop orders in the U S West states.

Rhythms has on a number of occasions, by e-mail, by formal letters, and in voice conversations, requested that U S West provide confirmations of correct CFA. Rhythms has also requested that U S West develop comprehensive processes and distribute this documentation to the U S West central office technicians and/or State Interconnection Managers (SICMs) to confirm accurate labeling of the tie down frames in the central offices. U S West has refused to provide either a confirmation of accurate database information to Rhythms or to the U S West personnel mentioned above.

Since the middle of May 1999, a total of thirty-five (35) loop orders have been submitted to U S West by Rhythms. Of these orders, only twelve (12) have successfully been provisioned. Of these twelve provisioned, all but four (4) had to be re-submitted to U S West multiple times. The most compelling statistic is that none of the 12 orders provisioned to date have been provisioned within the five (5) day contractual provisioning requirement. In fact, several of these loop orders took provisioning intervals exceeding one month. Rhythms acknowledges that numerous diverse problems contribute to U S West's dismal performance on these initial loop orders. However, it is clear that a sustained performance level like that experienced by Rhythms to date would simply bar Rhythms' ability to participate in the advanced services marketplace.

An additional problem that Rhythms has faced with U S West's ordering processes is that many of Rhythms loop orders are being "held" by U S West for lack of either the distribution or feeder portion of the outside plant facilities. Each time a Rhythms loop order "goes held," the order is sent to a separate "Held Order Group" then undergoes review by U S West engineers. Estimates of resources (work definition, time to complete needed work, monetary) that US West claims are necessary for processing the order are then provided to Rhythms. Every order that "goes held" is handled on an individual case basis ("ICB") resulting in widely varying ranges of proposed due dates and costs, but nearly all are beyond any reasonable or contractual interval or expense.

U S West also obstructs the deployment of competitive services by providing nearly meaningless Firm Order Confirmations ("FOCs") in response to loop orders. The FOCs received are seemingly provided only to meet a contractual obligation - the due date provided on the FOC is seldom met. This leaves Rhythms in continual doubt about when U S West will actually provision the requested loops. Rhythms has experienced loop orders where U S West's post-FOC intervals have exceeded twenty (20) days. The contracts between U S West and Rhythms stipulate that U S West will provide FOCs within 48 hours from order acceptance, and the facility provisioned on the due date listed on the FOC, but in no case later than five (5) days after the initial order was placed. However the due dates provided on the FOCs are little, if any use, because none of the orders provisioned to date have been provisioned by the due date on the FOC. Because the FOC is not contractually required until 48 hours following order acceptance, only three days remain of the original five-day provisioning interval. Thus, Rhythms cannot, even two days after order acceptance, convey with any confidence to its end-user customers, when the order actually will be provisioned.

Checklist Item No. 5 (local transport):

Rhythms Links joins in AT&T's comments.

CONCLUSION

As a direct result of U S West's limited attempts — throughout its region — to provide genuine access to the unbundled network elements necessary for advanced services providers to compete, Rhythms and other new entrants have already experienced significant and unnecessary delays and costs. Thus the delivery of competition in the local services market to the citizens of Arizona will continue to be delayed. To date, Rhythms has worked diligently with U S West in an attempt to mutually address and alleviate any operational issues that might contribute to delays in Rhythms' ability to order UNEs. Despite these efforts, reaching the highest levels of U S West's wholesale services division, the many problems discussed above persist. Therefore, based on U S West's utter failure to adequately provide collocation and interconnection in a reasonable time and at a reasonable price in Arizona, it is Rhythms' initial position that U S West should be denied §271 permission to enter the interLATA market.

LEWIS AND ROCA LLP
LAWYERS

RESPECTFULLY submitted this 7th day of September, 1999.

LEWIS and ROCA LLP

By: Thomas H. Campbell
40 North Central Avenue
Phoenix, AZ 85004

\- AND –

Colin M. Alberts
BLUMENFELD & COHEN
1625 Massachusets Avenue N.W.
Suite 300
Washington, DC 20036

\- AND –

Frank Paganelli
Douglas H. Hsiao
Rhythms Links Inc.
6933 S. Revere Parkway
Englewood, CO 80112

Attorneys for Rhythms Links Inc.
f/k/a ACI Corp.

LEWIS AND ROCA LLP
LAWYERS

ORIGINAL and ten (10) copies of the foregoing filed this 7th day of September 1999, with:

The Arizona Corporation Commission
Docket Control – Utilities Division
1200 W. Washington Street
Phoenix, Arizona 85007

COPIES of the foregoing hand-delivered this 7th day of September, 1999, to:

Maureen Scott, Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Jerry Rudibaugh, Chief Hearing Officer
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Paul Bullis, Chief Counsel
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Acting Director, Ray Williamson
Utilities Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

COPIES of the foregoing mailed this 7th day of September, 1999, to:

Pat van Midde
AT&T Communications of the
Mountain States
2800 N. Central Avenue
Phoenix, Arizona 85004

Stephen Gibelli
Residential Utility Consumer Office
2828 N. Central Avenue
Phoenix, Arizona 85004

LEWIS AND ROCA LLP
LAWYERS

Lex Smith
Michael Patten
Brown & Bain, P.A.
2901 N. Central Avenue
Phoenix, Arizona 85012

Don Low, Senior Attorney
Sprint Communications Co., L.P.
8140 Ward Parkway 5-E
Kansas City, Missouri 64114

Timothy Berg
Fennemore, Craig, P.C.
3003 N. Central Avenue
Suite 2600
Phoenix, Arizona 85012-3913

Andrew D. Crain
Thomas M. Dethlef
Charles Steese
US West, Inc.
1801 California Street, Ste. 5100
Denver, Colorado 80202

Joan S. Burke
Osborn & Maledon
2929 N. Central Avenue
21st Floor
Phoenix, Arizona 85067-6379

Richard S. Wolters
AT&T & TCG
1875 Lawrence St, Ste. 1575
Denver, Colorado 82002

Michael M. Grant
Gallagher & Kennedy
2600 N. Central Avenue
Phoenix, Arizona 85004-3020

Richard M. Rindler
Morton J. Posner
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116

Carrington Phillip
Cox Communications, Inc.
1400 Lake Hearn Drive, N.E.
Atlanta, Georgia 30319

LEWIS AND ROCA LLP
LAWYERS

Penny Bewick
Electric Lightwave, Inc.
4400 NE 77th Avenue
Vancouver, Washington 98662

Charles Kallenback
ACSI
131 National Business Parkway
Annapolis Junction, Maryland 20701

Richard Smith
Cox California Telecom, Inc.
Two Jack London Square
Oakland, California 94697

Joyce Hundley
United States Department of Justice Antitrust Division
1401 H Street, N.W.
Suite 8000
Washington, D.C. 20530

Thomas F. Dixon
MCI Telecommunications Corporation
707 17th Street, Suite 3900
Denver, Colorado 80202

Daniel Waggoner
Davis Wright Tremaine
2600 Century Square
15011 Fourth Avenue
Seattle, Washington 98101-1688

Alaine Miller
NextLink Communications, Inc.
500 108th Avenue NE
Suite 2200
Bellevue, Washington 98004

Diane Bacon, Legislative Director
Communications Workers of America
5818 N. 7th Street, Suite 206
Phoenix, Arizona 85014-5811

Andrew O. Isar
Telecommunications Resellers Association
4312 92nd Avenue, N.W.
Gig Harbor, WA 98335

LEWIS AND ROCA LLP

LAWYERS

Raymond S. Heyman
Randall H. Warner
Roshka Heyman & DeWulf
Two Arizona Center
400 N. Fifth Street, Suite 1000
Phoenix, Arizona 85004

Maureen Arnold
US West Communications, Inc.
3033 N. Third Street
Room 1010
Phoenix, Arizona 85012

Mark Dioguardi
Tiffany and Bosco PA
500 Dial Tower
1850 N. Central Avenue
Phoenix, Arizona 85004

Thomas L. Mumaw
Snell & Wilmer
One Arizona Center
Phoenix, Arizona 85004-0001

Betty J. Griffin